



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### HB3667

by Rep. Dwight Kay

#### SYNOPSIS AS INTRODUCED:

40 ILCS 5/7-109	from Ch. 108 1/2, par. 7-109
40 ILCS 5/15-106	from Ch. 108 1/2, par. 15-106
40 ILCS 5/15-107	from Ch. 108 1/2, par. 15-107
40 ILCS 5/16-106	from Ch. 108 1/2, par. 16-106

Amends the Illinois Pension Code. Limits the ability of certain classes of persons to participate in the retirement systems established under the Illinois Municipal Retirement Fund (IMRF), State Universities, and Downstate Teachers Articles of the Code. In the State Universities Article, specifies that, in the case of doubt as to whether a person is an employee, the decision of the Board of Trustees of the State Universities Retirement System shall be final. Effective immediately.

LRB098 13554 JDS 48079 b

FISCAL NOTE ACT  
MAY APPLY

PENSION IMPACT  
NOTE ACT MAY  
APPLY

1 AN ACT concerning public employee benefits.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Illinois Pension Code is amended by changing  
5 Sections 7-109, 15-106, 15-107, and 16-106 as follows:

6 (40 ILCS 5/7-109) (from Ch. 108 1/2, par. 7-109)

7 Sec. 7-109. Employee.

8 (1) "Employee" means any person who:

9 (a) 1. Receives earnings as payment for the performance  
10 of personal services or official duties out of the  
11 general fund of a municipality, or out of any special  
12 fund or funds controlled by a municipality, or by an  
13 instrumentality thereof, or a participating  
14 instrumentality, including, in counties, the fees or  
15 earnings of any county fee office; and

16 2. Under the usual common law rules applicable in  
17 determining the employer-employee relationship, has  
18 the status of an employee with a municipality, or any  
19 instrumentality thereof, or a participating  
20 instrumentality, including aldermen, county  
21 supervisors and other persons (excepting those  
22 employed as independent contractors) who are paid  
23 compensation, fees, allowances or other emolument for

1           official duties, and, in counties, the several county  
2           fee offices.

3           (b) Serves as a township treasurer appointed under the  
4           School Code, as heretofore or hereafter amended, and who  
5           receives for such services regular compensation as  
6           distinguished from per diem compensation, and any regular  
7           employee in the office of any township treasurer whether or  
8           not his earnings are paid from the income of the permanent  
9           township fund or from funds subject to distribution to the  
10          several school districts and parts of school districts as  
11          provided in the School Code, or from both such sources; or  
12          is the chief executive officer, chief educational officer,  
13          chief fiscal officer, or other employee of a Financial  
14          Oversight Panel established pursuant to Article 1H of the  
15          School Code, other than a superintendent or certified  
16          school business official, except that such person shall not  
17          be treated as an employee under this Section if that person  
18          has negotiated with the Financial Oversight Panel, in  
19          conjunction with the school district, a contractual  
20          agreement for exclusion from this Section.

21          (c) Holds an elective office in a municipality,  
22          instrumentality thereof or participating instrumentality.

23          (2) "Employee" does not include persons who:

24                  (a) Are eligible for inclusion under any of the  
25                  following laws:

26                          1. "An Act in relation to an Illinois State

1 Teachers' Pension and Retirement Fund", approved May  
2 27, 1915, as amended;

3 2. Articles 15 and 16 of this Code.

4 However, such persons shall be included as employees to  
5 the extent of earnings that are not eligible for inclusion  
6 under the foregoing laws for services not of an  
7 instructional nature of any kind.

8 However, any member of the armed forces who is employed  
9 as a teacher of subjects in the Reserve Officers Training  
10 Corps of any school and who is not certified under the law  
11 governing the certification of teachers shall be included  
12 as an employee.

13 (b) Are designated by the governing body of a  
14 municipality in which a pension fund is required by law to  
15 be established for policemen or firemen, respectively, as  
16 performing police or fire protection duties, except that  
17 when such persons are the heads of the police or fire  
18 department and are not eligible to be included within any  
19 such pension fund, they shall be included within this  
20 Article; provided, that such persons shall not be excluded  
21 to the extent of concurrent service and earnings not  
22 designated as being for police or fire protection duties.  
23 However, (i) any head of a police department who was a  
24 participant under this Article immediately before October  
25 1, 1977 and did not elect, under Section 3-109 of this Act,  
26 to participate in a police pension fund shall be an

1 "employee", and (ii) any chief of police who elects to  
2 participate in this Fund under Section 3-109.1 of this  
3 Code, regardless of whether such person continues to be  
4 employed as chief of police or is employed in some other  
5 rank or capacity within the police department, shall be an  
6 employee under this Article for so long as such person is  
7 employed to perform police duties by a participating  
8 municipality and has not lawfully rescinded that election.

9 (c) After August 26, 2011 (the effective date of Public  
10 Act 97-609), are contributors to or eligible to contribute  
11 to a Taft-Hartley pension plan established on or before  
12 June 1, 2011 and are employees of a theatre, arena, or  
13 convention center that is located in a municipality located  
14 in a county with a population greater than 5,000,000, and  
15 to which the participating municipality is required to  
16 contribute as the person's employer based on earnings from  
17 the municipality. Nothing in this paragraph shall affect  
18 service credit or creditable service for any period of  
19 service prior to August 26, 2011, and this paragraph shall  
20 not apply to individuals who are participating in the Fund  
21 prior to August 26, 2011.

22 (d) Become an employee of any of the following  
23 participating instrumentalities on or after the effective  
24 date of this amendatory Act of the 98th General Assembly:  
25 the Illinois Municipal League; the Illinois Association of  
26 Park Districts; the Illinois Supervisors, County

1       Commissioners and Superintendents of Highways Association;  
2       an association, or not-for-profit corporation, membership  
3       in which is authorized under Section 85-15 of the Township  
4       Code; the United Counties Council; or the Will County  
5       Governmental League.

6       (3) All persons, including, without limitation, public  
7       defenders and probation officers, who receive earnings from  
8       general or special funds of a county for performance of  
9       personal services or official duties within the territorial  
10      limits of the county, are employees of the county (unless  
11      excluded by subsection (2) of this Section) notwithstanding  
12      that they may be appointed by and are subject to the direction  
13      of a person or persons other than a county board or a county  
14      officer. It is hereby established that an employer-employee  
15      relationship under the usual common law rules exists between  
16      such employees and the county paying their salaries by reason  
17      of the fact that the county boards fix their rates of  
18      compensation, appropriate funds for payment of their earnings  
19      and otherwise exercise control over them. This finding and this  
20      amendatory Act shall apply to all such employees from the date  
21      of appointment whether such date is prior to or after the  
22      effective date of this amendatory Act and is intended to  
23      clarify existing law pertaining to their status as  
24      participating employees in the Fund.

25      (Source: P.A. 97-429, eff. 8-16-11; 97-609, eff. 8-26-11;  
26      97-813, eff. 7-13-12.)

1 (40 ILCS 5/15-106) (from Ch. 108 1/2, par. 15-106)

2 Sec. 15-106. Employer. "Employer": The University of  
3 Illinois, Southern Illinois University, Chicago State  
4 University, Eastern Illinois University, Governors State  
5 University, Illinois State University, Northeastern Illinois  
6 University, Northern Illinois University, Western Illinois  
7 University, the State Board of Higher Education, the Illinois  
8 Mathematics and Science Academy, the University Civil Service  
9 Merit Board, the Board of Trustees of the State Universities  
10 Retirement System, the Illinois Community College Board,  
11 community college boards, any association of community college  
12 boards organized under Section 3-55 of the Public Community  
13 College Act, the Board of Examiners established under the  
14 Illinois Public Accounting Act, and, only during the period for  
15 which employer contributions required under Section 15-155 are  
16 paid, the following organizations: the alumni associations,  
17 the foundations and the athletic associations which are  
18 affiliated with the universities and colleges included in this  
19 Section as employers. An individual that begins employment  
20 after the effective date of this amendatory Act of the 98th  
21 General Assembly with an entity not defined as an employer in  
22 this Section shall not be deemed an employee for the purposes  
23 of this Article with respect to that employment and shall not  
24 be eligible to participate in the System with respect to that  
25 employment; provided, however, that those individuals who are

1 both employed and already participants in the System on the  
2 effective date of this amendatory Act of the 98th General  
3 Assembly shall be allowed to continue as participants in the  
4 System for the duration of that employment.

5 Notwithstanding any provision of law to the contrary, an  
6 individual who begins employment with any of the following  
7 employers on or after the effective date of this amendatory Act  
8 of the 98th General Assembly shall not be deemed an employee  
9 and shall not be eligible to participate in the System with  
10 respect to that employment: any association of community  
11 college boards organized under Section 3-55 of the Public  
12 Community College Act, the Association of Illinois  
13 Middle-Grade Schools, the Illinois Association of School  
14 Administrators, the Illinois Association for Supervision and  
15 Curriculum Development, the Illinois Principals Association,  
16 the Illinois Association of School Business Officials, or the  
17 Illinois Special Olympics; provided, however, that those  
18 individuals who are both employed and already participants in  
19 the System on the effective date of this amendatory Act of the  
20 98th General Assembly shall be allowed to continue as  
21 participants in the System for the duration of that employment.

22 A department as defined in Section 14-103.04 is an employer  
23 for any person appointed by the Governor under the Civil  
24 Administrative Code of Illinois who is a participating employee  
25 as defined in Section 15-109. The Department of Central  
26 Management Services is an employer with respect to persons

1 employed by the State Board of Higher Education in positions  
2 with the Illinois Century Network as of June 30, 2004 who  
3 remain continuously employed after that date by the Department  
4 of Central Management Services in positions with the Illinois  
5 Century Network, the Bureau of Communication and Computer  
6 Services, or, if applicable, any successor bureau.

7 The cities of Champaign and Urbana shall be considered  
8 employers, but only during the period for which contributions  
9 are required to be made under subsection (b-1) of Section  
10 15-155 and only with respect to individuals described in  
11 subsection (h) of Section 15-107.

12 (Source: P.A. 95-369, eff. 8-23-07; 95-728, eff. 7-1-08 - See  
13 Sec. 999.)

14 (40 ILCS 5/15-107) (from Ch. 108 1/2, par. 15-107)

15 Sec. 15-107. Employee.

16 (a) "Employee" means any member of the educational,  
17 administrative, secretarial, clerical, mechanical, labor or  
18 other staff of an employer whose employment is permanent and  
19 continuous or who is employed in a position in which services  
20 are expected to be rendered on a continuous basis for at least  
21 4 months or one academic term, whichever is less, who (A)  
22 receives payment for personal services on a warrant issued  
23 pursuant to a payroll voucher certified by an employer and  
24 drawn by the State Comptroller upon the State Treasurer or by  
25 an employer upon trust, federal or other funds, or (B) is on a

1 leave of absence without pay. Employment which is irregular,  
2 intermittent or temporary shall not be considered continuous  
3 for purposes of this paragraph.

4 However, a person is not an "employee" if he or she:

5 (1) is a student enrolled in and regularly attending  
6 classes in a college or university which is an employer,  
7 and is employed on a temporary basis at less than full  
8 time;

9 (2) is currently receiving a retirement annuity or a  
10 disability retirement annuity under Section 15-153.2 from  
11 this System;

12 (3) is on a military leave of absence;

13 (4) is eligible to participate in the Federal Civil  
14 Service Retirement System and is currently making  
15 contributions to that system based upon earnings paid by an  
16 employer;

17 (5) is on leave of absence without pay for more than 60  
18 days immediately following termination of disability  
19 benefits under this Article;

20 (6) is hired after June 30, 1979 as a public service  
21 employment program participant under the Federal  
22 Comprehensive Employment and Training Act and receives  
23 earnings in whole or in part from funds provided under that  
24 Act; or

25 (7) is employed on or after July 1, 1991 to perform  
26 services that are excluded by subdivision (a)(7)(f) or

1 (a) (19) of Section 210 of the federal Social Security Act  
2 from the definition of employment given in that Section (42  
3 U.S.C. 410).

4 (b) Any employer may, by filing a written notice with the  
5 board, exclude from the definition of "employee" all persons  
6 employed pursuant to a federally funded contract entered into  
7 after July 1, 1982 with a federal military department in a  
8 program providing training in military courses to federal  
9 military personnel on a military site owned by the United  
10 States Government, if this exclusion is not prohibited by the  
11 federally funded contract or federal laws or rules governing  
12 the administration of the contract.

13 (c) Any person appointed by the Governor under the Civil  
14 Administrative Code of the State is an employee, if he or she  
15 is a participant in this system on the effective date of the  
16 appointment.

17 (d) A participant on lay-off status under civil service  
18 rules is considered an employee for not more than 120 days from  
19 the date of the lay-off.

20 (e) A participant is considered an employee during (1) the  
21 first 60 days of disability leave, (2) the period, not to  
22 exceed one year, in which his or her eligibility for disability  
23 benefits is being considered by the board or reviewed by the  
24 courts, and (3) the period he or she receives disability  
25 benefits under the provisions of Section 15-152, workers'  
26 compensation or occupational disease benefits, or disability

1 income under an insurance contract financed wholly or partially  
2 by the employer.

3 (f) Absences without pay, other than formal leaves of  
4 absence, of less than 30 calendar days, are not considered as  
5 an interruption of a person's status as an employee. If such  
6 absences during any period of 12 months exceed 30 work days,  
7 the employee status of the person is considered as interrupted  
8 as of the 31st work day.

9 (g) A staff member whose employment contract requires  
10 services during an academic term is to be considered an  
11 employee during the summer and other vacation periods, unless  
12 he or she declines an employment contract for the succeeding  
13 academic term or his or her employment status is otherwise  
14 terminated, and he or she receives no earnings during these  
15 periods.

16 (h) An individual who was a participating employee employed  
17 in the fire department of the University of Illinois's  
18 Champaign-Urbana campus immediately prior to the elimination  
19 of that fire department and who immediately after the  
20 elimination of that fire department became employed by the fire  
21 department of the City of Urbana or the City of Champaign shall  
22 continue to be considered as an employee for purposes of this  
23 Article for so long as the individual remains employed as a  
24 firefighter by the City of Urbana or the City of Champaign. The  
25 individual shall cease to be considered an employee under this  
26 subsection (h) upon the first termination of the individual's

1 employment as a firefighter by the City of Urbana or the City  
2 of Champaign.

3 (i) An individual who is employed on a full-time basis as  
4 an officer or employee of a statewide teacher organization that  
5 serves System participants or an officer of a national teacher  
6 organization that serves System participants may participate  
7 in the System and shall be deemed an employee, provided that  
8 (1) the individual has previously earned creditable service  
9 under this Article, (2) the individual files with the System an  
10 irrevocable election to become a participant before the  
11 effective date of this amendatory Act of the 97th General  
12 Assembly, (3) the individual does not receive credit for that  
13 employment under any other Article of this Code, and (4) the  
14 individual first became a full-time employee of the teacher  
15 organization and becomes a participant before the effective  
16 date of this amendatory Act of the 97th General Assembly. An  
17 employee under this subsection (i) is responsible for paying to  
18 the System both (A) employee contributions based on the actual  
19 compensation received for service with the teacher  
20 organization and (B) employer contributions equal to the normal  
21 costs (as defined in Section 15-155) resulting from that  
22 service; all or any part of these contributions may be paid on  
23 the employee's behalf or picked up for tax purposes (if  
24 authorized under federal law) by the teacher organization.

25 A person who is an employee as defined in this subsection  
26 (i) may establish service credit for similar employment prior

1 to becoming an employee under this subsection by paying to the  
2 System for that employment the contributions specified in this  
3 subsection, plus interest at the effective rate from the date  
4 of service to the date of payment. However, credit shall not be  
5 granted under this subsection for any such prior employment for  
6 which the applicant received credit under any other provision  
7 of this Code, or during which the applicant was on a leave of  
8 absence under Section 15-113.2.

9 (j) A person employed by the State Board of Higher  
10 Education in a position with the Illinois Century Network as of  
11 June 30, 2004 shall be considered to be an employee for so long  
12 as he or she remains continuously employed after that date by  
13 the Department of Central Management Services in a position  
14 with the Illinois Century Network, the Bureau of Communication  
15 and Computer Services, or, if applicable, any successor bureau  
16 and meets the requirements of subsection (a).

17 (k) In the case of doubt as to whether any person is an  
18 employee within the meaning of this Section, the decision of  
19 the Board shall be final.

20 (Source: P.A. 97-651, eff. 1-5-12.)

21 (40 ILCS 5/16-106) (from Ch. 108 1/2, par. 16-106)

22 Sec. 16-106. Teacher. "Teacher": The following  
23 individuals, provided that, for employment prior to July 1,  
24 1990, they are employed on a full-time basis, or if not  
25 full-time, on a permanent and continuous basis in a position in

1 which services are expected to be rendered for at least one  
2 school term:

3 (1) Any educational, administrative, professional or  
4 other staff employed in the public common schools included  
5 within this system in a position requiring certification  
6 under the law governing the certification of teachers;

7 (2) Any educational, administrative, professional or  
8 other staff employed in any facility of the Department of  
9 Children and Family Services or the Department of Human  
10 Services, in a position requiring certification under the  
11 law governing the certification of teachers, and any person  
12 who (i) works in such a position for the Department of  
13 Corrections, (ii) was a member of this System on May 31,  
14 1987, and (iii) did not elect to become a member of the  
15 State Employees' Retirement System pursuant to Section  
16 14-108.2 of this Code; except that "teacher" does not  
17 include any person who (A) becomes a security employee of  
18 the Department of Human Services, as defined in Section  
19 14-110, after June 28, 2001 (the effective date of Public  
20 Act 92-14), or (B) becomes a member of the State Employees'  
21 Retirement System pursuant to Section 14-108.2c of this  
22 Code;

23 (3) Any regional superintendent of schools, assistant  
24 regional superintendent of schools, State Superintendent  
25 of Education; any person employed by the State Board of  
26 Education as an executive; any executive of the boards

1 engaged in the service of public common school education in  
2 school districts covered under this system of which the  
3 State Superintendent of Education is an ex-officio member;

4 (4) Any employee of a school board association  
5 operating in compliance with Article 23 of the School Code  
6 who is certificated under the law governing the  
7 certification of teachers, provided that he or she becomes  
8 such an employee before the effective date of this  
9 amendatory Act of the 98th General Assembly;

10 (5) Any person employed by the retirement system who:

11 (i) was an employee of and a participant in the  
12 system on August 17, 2001 (the effective date of Public  
13 Act 92-416), or

14 (ii) becomes an employee of the system on or after  
15 August 17, 2001;

16 (6) Any educational, administrative, professional or  
17 other staff employed by and under the supervision and  
18 control of a regional superintendent of schools, provided  
19 such employment position requires the person to be  
20 certificated under the law governing the certification of  
21 teachers and is in an educational program serving 2 or more  
22 districts in accordance with a joint agreement authorized  
23 by the School Code or by federal legislation;

24 (7) Any educational, administrative, professional or  
25 other staff employed in an educational program serving 2 or  
26 more school districts in accordance with a joint agreement

1 authorized by the School Code or by federal legislation and  
2 in a position requiring certification under the laws  
3 governing the certification of teachers;

4 (8) Any officer or employee of a statewide teacher  
5 organization or officer of a national teacher organization  
6 who is certified under the law governing certification of  
7 teachers, provided: (i) the individual had previously  
8 established creditable service under this Article, (ii)  
9 the individual files with the system an irrevocable  
10 election to become a member before the effective date of  
11 this amendatory Act of the 97th General Assembly, (iii) the  
12 individual does not receive credit for such service under  
13 any other Article of this Code, and (iv) the individual  
14 first became an officer or employee of the teacher  
15 organization and becomes a member before the effective date  
16 of this amendatory Act of the 97th General Assembly;

17 (9) Any educational, administrative, professional, or  
18 other staff employed in a charter school operating in  
19 compliance with the Charter Schools Law who is certificated  
20 under the law governing the certification of teachers; -

21 (10) Any person employed, on the effective date of this  
22 amendatory Act of the 94th General Assembly, by the  
23 Macon-Piatt Regional Office of Education in a  
24 birth-through-age-three pilot program receiving funds  
25 under Section 2-389 of the School Code who is required by  
26 the Macon-Piatt Regional Office of Education to hold a

1 teaching certificate, provided that the Macon-Piatt  
2 Regional Office of Education makes an election, within 6  
3 months after the effective date of this amendatory Act of  
4 the 94th General Assembly, to have the person participate  
5 in the system. Any service established prior to the  
6 effective date of this amendatory Act of the 94th General  
7 Assembly for service as an employee of the Macon-Piatt  
8 Regional Office of Education in a birth-through-age-three  
9 pilot program receiving funds under Section 2-389 of the  
10 School Code shall be considered service as a teacher if  
11 employee and employer contributions have been received by  
12 the system and the system has not refunded those  
13 contributions.

14 An annuitant receiving a retirement annuity under this  
15 Article or under Article 17 of this Code who is employed by a  
16 board of education or other employer as permitted under Section  
17 16-118 or 16-150.1 is not a "teacher" for purposes of this  
18 Article. A person who has received a single-sum retirement  
19 benefit under Section 16-136.4 of this Article is not a  
20 "teacher" for purposes of this Article.

21 (Source: P.A. 97-651, eff. 1-5-12; revised 8-3-12.)

22 Section 99. Effective date. This Act takes effect upon  
23 becoming law.